

IN THE MATTER OF : BEFORE THE
PATRICK CONNOLLY : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 08-003V

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DECISION AND ORDER

On March 31, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Patrick Connolly for variances to: (1) reduce the 20-foot front setback to 16 feet and the 30-foot rear setback to 24 feet for a garage addition, and (2) reduce the 30-foot rear setback to 15 feet for a family room addition in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Sections 110.D.4.b(1)(a) and 110.D.4.d(1)(c)(i) of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Patrick Connolly and Heidi Connolly testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8137 Morning Breeze Drive, is located in the 1st Election District. It is identified on Tax Map 37, Grid 14, as Parcel 150, Lot 138 (the "Property").

2. The Property is an irregularly shaped lot located in an R-SC (Residential: Single Cluster) Zoning District. It is .177 acres in area. The Property is located on the Morning Breeze Drive cul-de-sac, which creates a partial curve along the front lot line. The southerly side lot appears to be about 71 feet deep and the northerly line appears to be about 107 feet deep. The rear lot line is appears to be about 75 feet wide.

3. The Property is improved with a two-story, split-level, single-family detached dwelling with a basement. The dwelling is 44.3 feet wide by 24.5 feet deep and fronts on Morning Breeze Drive. Its northwestern corner appears to lie on the 20-foot front setback line.

4. The dwelling is accessed from a paved driveway in the Property's northeastern section. The front yard has a moderate upward slope.

5. Adjacent properties are also zoned R-SC and improved with single-family detached dwellings, many of which have a one or two-car attached garage. Lots 139, 140, 141, 142, and 143 are also irregularly shaped properties fronting on the cul-de-sac. Lot 141 is smaller than the Property, being 7,559.52 square feet in seize. Several properties fronting on Morning Breeze Drive are less than 7,000 square feet in area. These lots and the Property are part of the 24-lot Thompson's Purchase development recorded in 1985.

6. The closest residence to the Property, Lott 139, 6141 Morning Breeze Drive, is improved with a single-family detached dwelling that appears to be situated close to the 7.5 side setback.

7. Adjoining the Property's rear lot line is Open Space Lot 155.

8. The Petitioner, the Property owner, is effectively requesting three variances. The first two variances are for a garage that would encroach 4 feet into the 20-foot front setback and 6 feet into the 30-foot rear setback. The third variance is for a 15-foot encroachment into the

rear setback for a 16-foot deep by 14-foot wide family room. The existing driveway would be removed and a new driveway would be established on the other side of the lot.

9. When questioned about the possible conversion of the unfinished basement to a family room, Ms. Connolly testified it could be converted but is now occupied by excessive storage. She also stated that the proposed rear encroachment for the garage is intended to accommodate a new entrance that would not enter directly into the dining room.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties.

Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

A. The Garage

1. In this case, the curvature of the front lot line reduces the front area of the building envelope. Although other lots on the cul-de-sac have curving frontages, the cul-de-sac's curvature is deepest along the Property's frontage. Because the front yard is shallower than other nearby properties, the buildable area of the lot is narrower here. With the garage addition, the home will still be similar in size to neighboring homes. In order to construct the garage, it is necessary to encroach slightly into the front and rear setback. Consequently, I find that the curvature of the Property's section is a unique physical condition causing the Petitioners practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The garage addition will be used for permitted residential purposes and will not change the nature or intensity of the use. The garage will be at least 15 feet from the adjacent residence, in accordance with Section 110.D.5.c. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the curvature of the front Property line and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed 20' by 26' garage addition is the minimum width feasible and will be located in the only area practical due to the size and shape of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

B. The Family Room

1. The Petitioner has not shown that the Property's rear lot or building restriction lines are in any way unique such that the rear setback requirement will disproportionately impact it. A review of the Petitioner's evidence and testimony indicate that all the neighboring residences are set back at least 30 feet from the rear lines. Most importantly, this setback is consistent for all those properties adjoining the interior Open Space Lot. Although Ms. Connolly stated that Lot 134 on another cul-de-sac adjoining the same Open Space Lot has a rear addition, the recorded plat clearly shows that this lot has an atypically deep building envelope and also the same 30-foot rear setback.

2. Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, he has not shown that the Property's rear section has any unusual or unique characteristic that causes the rear setback restriction to disproportionately impact upon it.

3. In addition, the Petitioner's request does not pass the second prong. The Petitioner is not unreasonably prevented from making a permitted use of the Property because Ms.

Connolly testified the unfinished basement could be turned into a family room. For these reasons, the variance request fails to comply with Section 130.B.2.a(1).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioner to construct a family room addition on the rear of his house, it is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a 50% variance from the rear setback requirement to this Petitioner to accommodate the owners' personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance that would cause a 15-foot encroachment into the rear setback requirement. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this 7th day of April 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

1. That the Petition of Patrick Connolly for a variance to reduce the required 30-foot rear setback to 15 feet for a family room addition in an R-SC (Residential: Single Cluster) Zoning District is **DENIED**.
2. That the Petition of Patrick Connolly for a variance to reduce the required 20-foot setback from a public street right-of-way to 16 feet and the 30-foot rear setback to 24 feet for a garage addition in an R-SC (Residential: Single Cluster) Zoning District is **GRANTED**;

Provided, however, that:

- A. The variance will apply only to the garage addition and use as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.
- B. The Petitioner shall obtain a building permit for the garage addition.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed:

4/8/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.